

ORDINANCE NO. 2326, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 14.04 (INCLUSIONARY HOUSING) OF TITLE 14 (HOUSING) CHANGING INCLUSIONARY HOUSING REQUIREMENTS; AMENDING SECTION 14.08.020 (FEE ESTABLISHED) OF CHAPTER 14.08 (IN-LIEU HOUSING FEES) OF TITLE 14 (HOUSING) TO ADD A COST OF LIVING ANNUAL INCREASE TO IN-LIEU HOUSING FEES; AND REPEALING DUPLICATIVE AFFORDABLE HOUSING PROVISIONS IN CHAPTER 18.48 (AFFORDABLE HOUSING) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 14.04 (Inclusionary Housing) of Title 14 (Housing) is hereby amended to read as follows:

14.04.010 Findings.

The City Council finds that:

- A. Housing prices and rents in the City of Morgan Hill have increased at a significantly higher rate than general wages. There is a need for affordable housing subject to income-based occupancy requirements and rent and sale price restrictions. The lack of affordable housing forces many residents to pay a very high percentage of their income for housing or to commute considerable distances, adding to air pollution and traffic congestion throughout Santa Clara County. The lack of affordable housing has made it more difficult to recruit workers, potentially affecting the economic vitality of the city. New housing developments do not provide an adequate supply of housing affordable to extremely low-, low- and moderate-income households.
- B. Rental and for-sale housing in Morgan Hill has become steadily more expensive. Although Morgan Hill has historically met its Regional Housing Needs Allocation (RHNA) goals, in recent years, housing costs have escalated sharply, increasing faster than incomes. As a result, there is a severe shortage of adequate, affordable housing for extremely low-, very low-, low-, and moderate-income households.
- C. In order to meet the needs of Morgan Hill households, residential developments will need to provide housing for a variety of household types, a range of incomes, and ages. The inclusionary housing ordinance codified in this title will substantially advance the city's interest in providing additional rental and ownership housing that is subject to income-based occupancy requirements and rent, and sale price restrictions; thus, affordable to all income levels and dispersed throughout the city.

- D. Continued new housing development that does not include housing for very-low, low- and moderate-income households will further contribute to the current shortage of affordable housing by reducing the small remaining supply of undeveloped land.
- E. On February 18, 2015, the city council approved the city's housing element, a chapter of the General Plan which includes strategies to build new housing to meet the full range of future community housing needs, including affordable and accessible housing.
- F. Implementation of the inclusionary housing ordinance is a necessary part of the city's efforts to meet its Regional Housing Needs Allocation (RHNA) goals and obligations. Pursuant to the ordinance, at least ten percent (10%) of the units in a new housing development of two or more units to be developed in the downtown, and at least fifteen percent (15%) of the units in a new housing development of two or more units to be located outside of downtown, will be required to be price or rent-restricted and available for occupancy by very low, low, and moderate-income households. Under certain conditions, developers will have an option to provide inclusionary units off-site, and payment of an in-lieu housing fee is permitted under certain circumstances.

14.04.020 Purpose.

The purpose of this chapter is to further the city's efforts to require housing available to extremely low-income, very low-income, low-income, and moderate-income households. The housing element of the city's General Plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

Providing the inclusionary units required by this chapter will help to ensure that part of Morgan Hill's remaining developable land is used to provide rent and sale price restricted affordable housing to encourage an economically balanced and inclusive community. Requiring builders of new market-rate housing to include some housing affordable to households at a range of incomes is consistent with the goal of fostering an adequate supply of housing for persons at all income levels and serves the goal of mixed-income housing. Furthermore, the production of inclusionary units is intended to assist the city in meeting its Regional Housing Needs Allocation.

The inclusionary housing ordinance is required in order to promote and protect the public health, safety, and general welfare while preserving and enhancing economic diversity and inclusiveness within the city.

14.04.030 Definitions.

When used in this chapter, the following terms shall have the meaning set forth below:

1. "Affordable Ownership Cost" means the projected monthly housing cost during the first calendar year of a household's occupancy, as determined by the city, including mortgage principal and interest payments, mortgage insurance fees, if any, property taxes, reasonable allowances for utilities and property maintenance and repairs, homeowner's insurance, and homeowners' association dues, if applicable, that in the aggregate does not exceed thirty five percent (35%) of the applicable income limit for a particular for-sale inclusionary unit. In calculating Affordable Ownership Cost, mortgage payments will be calculated using a thirty (30) year term, an interest rate equal to the Freddie Mac

- ten (10) year average interest rate as published in the Freddie Mac Primary Mortgage Market Survey or equivalent source and will assume a three percent (3%) downpayment.
2. "Affordable Rent" means the following, consistent with the provisions of Section 50053 of the California Health and Safety Code: a monthly rent and utility allowance that does not exceed one-twelfth (1/12th) times thirty percent (30%) times the following AMI levels, in each case adjusted for Assumed Household Size: for Extremely Low-Income Households 30% AMI, for Very Low-Income Households 50% AMI, for Low-Income Households 60% AMI, and for Moderate-Income Households 110% of AMI.
 3. "Affordable Sales Price" means the following, consistent with the provisions of Section 50052.5 of the California Health and Safety Code: for inclusionary units that are restricted for sale to moderate-income households, a sales price that will result in an Affordable Ownership Cost, as defined, for a household whose gross annual household income does not exceed one hundred ten percent (110%) of area median income-based upon assumed household size.
 4. "Applicant" means a person or entity who applies for approvals for a residential project, and if the applicant does not own the property on which the residential project is proposed, also means the owner or owners of the property.
 5. "Area median income" or "AMI" means the median household income for Santa Clara County, adjusted for actual household size, as determined and published from time to time by the California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to Section 50093(c) of the California Health and Safety Code.
 6. "Assumed household size" means, for the purpose of establishing affordable sales prices and Affordable Rent, a household with a total number of members equal to the number of bedrooms in the dwelling unit, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and subject to applicable federal rules (if any). For example, the assumed household size for a three-bedroom home is a four-person household.
 7. "Building permit" means full structural building permits as well as partial permits such as foundation-only permits.
 8. "Certificate of occupancy" means that construction is complete and the city building official or his or her designee has signed off the "residential dwelling occupancy approval" on the backside of the city of Morgan Hill building permit card.
 9. "City Manager" means the City Manager of Morgan Hill or his or her designee.
 10. "Contiguous" means any parcel of land that is:
 - a. Touching another parcel at any point;
 - b. Separated from another parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or
 - c. Separated from another parcel only by other real property of the applicant which is not subject to the requirements of this chapter at the time of the planning permit application by the applicant.

11. "Density bonus" means an increase over the number of units otherwise permitted in a proposed residential project provided pursuant to State density bonus law.
12. "Density bonus law" means California Government Code Section 65915 *et seq.*, as amended.
13. "Downtown" means the geographical area as depicted in Figure CNF-2 of the General Plan.
14. "Dwelling unit" means a residential unit consisting of one or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.
15. "Eligible household" means a household whose gross annual household income does not exceed the applicable maximum for a given inclusionary unit.
16. "Extremely low-income household" means a household with a gross annual household income that does not exceed thirty percent of AMI for Santa Clara County based upon actual household size.
17. "First approval" means the first of the following approvals to be issued with respect to a residential project: building permit, planned development permit, tentative parcel map, tentative subdivision map, conditional use permit, design review permit, or other discretionary city land use approval.
18. "For-sale project" means a residential project, or portion thereof, that is intended to be sold to owner-occupants upon completion.
19. "For-sale unit" means an inclusionary unit that is required to be sold for owner-occupancy to an eligible household at an affordable sales price pursuant to this chapter.
20. "Gross annual household income" means the combined adjusted gross (pre-tax) income of all adult persons in a household as calculated pursuant to the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.
21. "Inclusionary affordable housing agreement" means an agreement between the city and an applicant, governing how the applicant will comply with this chapter.
22. "Inclusionary unit" means a dwelling unit that pursuant to this chapter is required to be rented at an Affordable Rent or sold at an affordable sales price to extremely low-, very low-, low-, or moderate-income households, as applicable.
23. "In-lieu fee" means the fee payable pursuant to Section 14.04.040.A of this chapter as a fractional fee and/or in lieu of development of up to one-half of the required number of inclusionary units, and the fee payable pursuant to Section 14.04.070 of this chapter as an alternative to the construction of on-site inclusionary units.
24. "Income-based housing" or "Income-adjusted housing" means housing that is restricted for occupancy at affordable rents by eligible low-, extremely low-, very low-, and moderate-income households, or that is restricted for sale at affordable sales prices to eligible low- and moderate-income households.

24. "Low-income household" means a household with a gross annual household income between fifty-one percent and eighty percent of AMI for Santa Clara County based upon actual household size.
25. "Market-rate unit" means a dwelling unit offered on the open market at the prevailing market-rate for purchase or rental.
26. "Moderate-income household" means a household with a gross annual household income between eighty-one percent and one hundred twenty percent of AMI for Santa Clara County based upon actual household size.
27. "Regional housing needs allocation" (RHNA) means the State of California mandated process that identifies the total number of housing units by affordability level that each jurisdiction must accommodate in its housing element.
28. "Rental project" means a residential project, or portion thereof, that is intended to be rented to tenants upon completion.
29. "Residential project" means a project undertaken for the purpose of development of land for residential purposes that requires the issuance of a discretionary or ministerial approval or permit, including a subdivision map or a permit for construction, and that will include two or more dwelling units. "Residential project" also includes developments on contiguous lots for which applications are filed by the same property owner or applicant and that will include two or more dwelling units.
30. "Very low-income household" means a household with a gross annual household income that does not exceed fifty percent of AMI for Santa Clara County based upon actual household size.

14.04.040 General requirements.

A. Percentage Requirement; In Lieu Fee.

1. Requirement. Except as provided in this paragraph A or in paragraphs B and D of this section or section 14.04.070 (Alternatives) at least fifteen percent of all units in residential projects shall be inclusionary units that shall be made available at Affordable Rents or affordable sales prices as prescribed in this section. The inclusionary units shall be approved, and construction of the inclusionary units shall be completed not later than the times prescribed in Section 14.04.050 of this chapter, unless an alternative requirement is approved pursuant to Section 14.04.070 of this chapter.
2. Fractional Number. Whenever application of the requirements of this chapter results in a fractional number of required inclusionary units, if the fraction is 0.50 or greater, construction of the next higher whole number of inclusionary Units shall be required, and where the fraction is 0.49 or less, payment of the applicable housing fee adopted by city council shall be required for the fractional unit.
3. In-Lieu Fee Election for One-Half of Required Inclusionary Units. Developers may elect to satisfy the applicable requirements set forth in paragraphs B, C, D, and E of this section by paying an in-lieu fee for up to one-half of the number of required inclusionary units and constructing the remaining required inclusionary units. If the required number of inclusionary

units results in a fractional number, the provisions of the preceding paragraph regarding payment of a fee shall apply to the fractional unit.

- B. For-Sale Projects in Downtown. All new for-sale residential projects consisting of two or more dwelling units located within downtown are required to restrict ten percent of the dwelling units for sale at affordable sales prices to moderate-income households. Such dwelling units must be sold to eligible households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five years.
- C. For-Sale Projects Outside of Downtown. All new for-sale residential projects consisting of two or more dwelling units located within the city but outside of downtown are required to restrict fifteen percent of the dwelling units for sale at affordable sales prices to moderate-income households. Such dwelling units must be sold to eligible households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five years.
- D. Rental Projects in Downtown. All new rental residential projects consisting of two or more dwelling units located within downtown are required to restrict ten percent of the dwelling units for rent at Affordable Rents and occupancy by low-income and very low-income households. Such dwelling units must be occupied by, or if vacant, available for occupancy by eligible households, and such restrictions shall be documented in a recorded inclusionary affordable housing agreement with a term of fifty-five years. At least one-half of the required inclusionary units shall be occupied by, or if vacant, available for occupancy at Affordable Rents to very low-income households.
- E. Rental Projects Outside of Downtown. All new rental residential projects consisting of two or more dwelling units located within the city but outside of downtown are required to restrict fifteen percent of the dwelling units for rent at Affordable Rents and occupancy by low-income and very low-income households. Such dwelling units must be occupied by, or if vacant, available for occupancy by eligible Households, and such restrictions shall be documented in a recorded inclusionary affordable housing agreement with a term of fifty-five years. At least one-half of the required inclusionary units shall be occupied by, or if vacant, available for occupancy at Affordable Rents to very low-income households.
- F. Inclusionary Housing Development Standards, Location and Design of Inclusionary Units. Residential projects that include inclusionary units shall conform to the following development standards. These incorporate the standards formerly known as the "Below Market-Rate (BMR) Program Development Standards" adopted by the City Council on September 26, 2018, as such may be amended from time to time.
 - 1. All inclusionary units shall be geographically and proportionally dispersed throughout the residential project. In residential projects that will consist of more than one building, the inclusionary units shall be dispersed among all of the buildings that comprise the development. In residential projects that will consist of more than one product type, the inclusionary units shall be dispersed among the product types, proportionate in number among each of the product types that comprise the development.
 - 2. In for-sale projects, the lot size for the inclusionary units shall be at least the same size as the smallest lot for market-rate units in the residential project.

3. The average bedroom and bathroom count in the inclusionary units shall be the same as the average bedroom and bathroom count in the market-rate units in the residential project.
4. The exterior trim, entry door hardware, and exterior finishes for the inclusionary units shall be of the same standard as the market-rate units in the residential project. There shall not be significant identifiable differences between inclusionary units and the market-rate units that are visible from the exterior of the dwelling units.
5. The interior finishes, equipment, fixtures, and appliances for the inclusionary units shall conform to the following minimum interior standard finishes:
 - a. All closets shall have doors
 - b. Interior doors to be raised panel type or same as market-rate
 - c. Door hardware to be brass finish or same as market-rate
 - d. Appliances shall be major brand name (if applicable)
 - e. Microwave hood is required to be vented to the exterior. When applicable exhaust vent shall be installed over the range
 - f. Units shall be roughed in for AC including electrical and line set
 - g. Basic alarm system to secure all accessible openings to the home
 - h. Electric garage door opener (if applicable)
6. The size, design, and distribution of model types for the inclusionary units shall be comparable and proportionate in number to the size, design, and distribution of each of the model types for the market-rate units in the residential project.
7. Occupants of inclusionary units shall be provided the same access to project amenities, recreational facilities, and common areas as occupants of market-rate units.
- G. For-sale projects. The inclusionary units that are constructed in for-sale projects shall be sold for owner-occupancy at an affordable sales price to moderate-income households that qualify as eligible households. Accessory Dwelling Units (ADU's) constructed within for-sale projects will not be counted toward satisfaction of the requirement to construct inclusionary units.
- H. Rental projects. The inclusionary units that are constructed in rental projects shall be occupied by, or if vacant, available for occupancy at Affordable Rents to low- and very low-income households. At least one-half of the required inclusionary units in rental projects, shall be occupied, or if vacant, available for occupancy at Affordable Rents to very low-income households.
- I. Exceptions. The affordability levels required for a residential project may be modified by written agreement between the city and the applicant upon a finding that such modification is necessary to effectively achieve the City's RHNA goals in the then-current housing element cycle.

14.04.050 Time of performance.

- A. An application for first approval of a residential project will not be deemed complete until the applicant has submitted plans and proposals that demonstrate how the applicant proposes to meet requirements of this chapter, including any plans for the construction of on-site units pursuant to Section 14.04.040 of this chapter or the applicant's proposal for an alternative means of compliance pursuant to Section 14.04.070, of this chapter. Plans that provide for on-site construction shall depict the proposed location for all inclusionary units on a separate exhibit.
- B. Conditions to carry out the purposes of this chapter shall be imposed on the first approval for a residential project. Additional conditions may be imposed on later city approvals or actions, including without limitation planned development permits, tentative parcel maps, tentative subdivision maps, conditional use permits, design review permits, or building permits. The conditions of approval included with the first approval of the residential project shall further provide that prior to the recordation of the parcel map or final map in the case of subdivisions and prior to the issuance of building permits for any residential project that does not require a parcel map or final map, the applicant shall enter into an inclusionary affordable housing agreement prepared by the city attorney, approved by the City Manager, and recorded against the property upon which the residential project will be developed.
 - 1. The inclusionary affordable housing agreement shall describe the specific requirements implementing the conditions of approval for the residential project, including, but not limited to, as applicable, the number of inclusionary units, the level(s) of affordability, the location and type of inclusionary units, timing of construction of inclusionary units in relation to the construction of the market-rate units contained in the residential project, marketing and selection of tenants and homebuyers, and the amount of the in-lieu fee, if any.
 - 2. The inclusionary affordable housing agreement may be amended by the parties, provided the amendment is consistent with the conditions of approval imposed as part of the first approval and the then-existing city approvals. If such proposed amendment is minor or technical in nature, the City Manager shall have authority to approve or disapprove the amendment on behalf of the city. If such proposed amendment makes a substantive or material change to the inclusionary affordable housing agreement, such amendment shall be effective only following notice and hearing and such other procedures as may be required by law, and approval by the city department that issued the first approval for the project.
 - 3. The inclusionary affordable housing agreement shall provide that the applicant shall be required to reimburse the city for its attorneys' fees incurred in connection with the preparation of the inclusionary housing agreement. In addition, for for-sale projects, the inclusionary housing agreement shall provide that the applicant shall be required to pay to the city or the city's designated program administrator, the city's fees associated with the initial sale of the inclusionary units to eligible households.
- C. Inclusionary units must be constructed concurrently with the construction of market-rate units. The city shall issue building permits, conduct final inspections, and issue certificates of occupancy for market-rate units only if a proportional number of building permits or

certificates of occupancy are concurrently issued, or a proportional number of final inspections are concurrently completed, for inclusionary units as required to satisfy the applicable requirements of section 14.04.040 of this chapter, or if applicable, proportional alternative performance under Section 14.04.070 of this chapter has been completed. The time requirements set forth in this subsection for issuance of building permits and certificates of occupancy for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the city determines this will provide greater public benefit.

14.04.060 Continued affordability and city review of occupancy.

- A. Term of affordability—For-sale projects. A resale restriction, covenant, deed of trust and/or other documents in the form prepared by the city attorney, shall be recorded against each inclusionary unit upon the sale of each for-sale unit. These documents shall have an initial term of forty-five years, and shall be renewed upon each change of title to the inclusionary unit. The resale restriction, or other documents required by this subsection, and any change in the form of any such documents, shall be approved by the City Manager or his or her designee prior to execution and recordation of such document. The city shall be a party to the resale restriction or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- B. Term of affordability—Rental projects. A regulatory agreement, covenant, deed of trust, and/or other documents prepared by the city attorney, shall be recorded against each residential project that contains inclusionary units that are rental units. These documents shall have a term of fifty-five years. The regulatory agreement and other documents required by this subsection, shall run with the land and shall not be affected by the sale of the property or units in the project. The regulatory agreement and other documents required by this subsection, and any modification to such document, shall be approved by the City Manager or his or her designee and approved as to form by the city attorney, prior to execution and recordation of such document. The city shall be a party to the regulatory agreement or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- C. Eligibility requirements. For-sale inclusionary units shall be sold only following city's approval of the affordable sales price and a determination that the purchaser is an eligible household. Such determinations shall be made by the city or its designated administrator as referenced in the Below Market-Rate (BMR) Program Administration, Chapter 14.12, Section 14.12.040, Duties of Program Administrator. If the city or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent tenants of rental inclusionary units, and the initial and subsequent purchasers of for-sale inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the City Manager or his or her designee.

14.04.070 Alternatives.

In lieu of building inclusionary units within a residential project, an applicant may propose to satisfy the requirements of this chapter by one of the following alternative modes of compliance, provided that the applicant includes such proposal in its application for the first approval of the

residential project, and further provided that the criteria stated in the relevant subsection below are satisfied.

- A. Rental units in for-sale projects. Where for-sale units are required to be provided pursuant to section 14.04.040 of this chapter, an applicant may instead elect to construct as part of the residential project rental units as prescribed in this paragraph that will be rented at affordable rents to extremely low-, very low-, low-, and moderate-income households. Substitution of rental units shall be allowed under this subsection only if either: (1) the rental units will have at least the same number of bedrooms as the for-sale units that would have been constructed, or (2) any comparative deficiency in the number of bedrooms is compensated for by additional units and/or affordability to low-income households, subject to approval by the City Manager or his or her designee. If a Developer desires to construct on-site inclusionary rental units in lieu of on-site inclusionary for-sale units, the requirement for such on-site rental inclusionary units shall be: (i) Five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Rent to Moderate-Income Households, five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Rent to Low-Income Households and five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Rent to Very Low-Income Households, or (ii) ten percent (10%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Rent to Extremely Low-Income Households. The affordability restrictions shall be set forth in a regulatory agreement prepared by the City, recorded against the property on which the rental inclusionary units are located, and having a term of fifty-five years.
- B. Off-site construction. An applicant may propose to construct, or facilitate construction by another developer, units that will not be physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the city determines this will provide greater public benefit). Off-site construction pursuant to this subsection shall be approved only if:
1. An inclusionary affordable housing agreement acceptable to the City Manager or his or her designee will be recorded against the properties upon which the residential project and the off-site units will be constructed;
 2. Approval for development of the off-site units has been secured not later than the time the residential project is approved. Building permits will be issued for the market-rate project only after building permits have been issued for the off-site inclusionary units, and final inspections will be completed and certificates of occupancy for the related market-rate units will be issued only after certificates of occupancy have been issued for the off-site inclusionary units, provided that the time requirements set forth in this subsection may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors, if the city determines this will provide greater public benefit;
 3. The off-site units will be greater in number or will be affordable to households with lower incomes than would otherwise be required by section 14.04.040 of this chapter;

4. For-Sale Residential Development:

- a. Off-site for-sale inclusionary units numbering no less than twenty percent (20%) of the total dwelling units in the Residential Development shall be made available for purchase at an Affordable Housing Cost to moderate-income households; or
- b. Off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to Moderate Income Households, off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to Low-Income Households, and off-site rental dwelling units numbering no less than ten percent (10%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to Very Low-Income Households.

5. Rental Residential Development:

Off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to Moderate-Income Households, off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to Low-Income Households, off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to Very Low-Income Households, and off-site rental inclusionary units numbering no less than five percent (5%) of the total dwelling units in the Residential Development shall be made available for rent at an Affordable Rent to Extremely Low-Income Households.

6. Financing or a viable financing plan is in place for the off-site units;
7. If the off-site units receive any public assistance, the developer of the market-rate project will contribute economic value to the off-site units equivalent to the cost that would have been incurred to provide the required number of inclusionary units on-site in the residential project; and
8. The city may require that completion of off-site units shall be further secured by the developer's agreement to pay an in-lieu fee in the amount approved by city council in the event the off-site units are not timely completed.

C. Land dedication. An applicant may propose to dedicate without cost to the city, a lot or lots within or contiguous to the residential project, or elsewhere in the city, equivalent in value to the amount of the in-lieu fee that would be payable for all inclusionary units that would otherwise be required pursuant to paragraph A.1 of Section 14.04.040 of this chapter, and in size sufficient to accommodate at least the number of inclusionary units that would otherwise be required for the residential project. If there is a difference in the value of the land that is dedicated and the value of

the obligation, the applicant will be required to pay the difference as an in-lieu fee. An election to dedicate land in lieu of compliance with other provisions of this chapter shall be allowed only if:

1. The size and condition of the lot or lots to be dedicated is sufficient to make development of the otherwise required inclusionary units economically feasible, and financing or a viable financing plan is in place for development of at least the required number of Inclusionary Units on the dedicated land; and
2. The land to be dedicated has a General Plan designation that authorizes residential uses and the site is zoned for and suitable for construction of affordable housing at a feasible cost, served by utilities, streets and other infrastructure; environmental review of the site has been completed demonstrating that there are no hazardous materials present or other material constraints on development of affordable housing on the lot or lots; and unless City agrees otherwise, land use approvals have been obtained as necessary for the development of the inclusionary units on the lot or lots.
3. The site is not located in a very high fire hazard zone; special flood hazard area; or a delineated earthquake fault zone; and no historic or cultural resources are known to exist on the property.
4. Prior to the commencement of construction of the Residential Development, marketable title to the site is transferred to the City or an affordable housing developer approved by the City pursuant to an agreement approved by the City and executed by and between the Developer and the City, and if applicable the affordable housing developer. A memorandum of the City's or affordable housing developer's rights to acquire the site in form approved by City shall be recorded against the land to be dedicated prior to issuance of land use entitlements for the residential development.

D. In-lieu housing fee.

1. An in-lieu housing fee may be paid in addition to building or in-lieu of building inclusionary units as follows:
 - a. As provided in Section 14.04.040.A, whenever application of the requirements of this chapter results in a fractional number of .49 or less of required inclusionary units.
 - b. As provided in section 14.04.040.A, developers may elect to satisfy the requirements of this chapter by paying an in-lieu fee for up to one-half of the required number of inclusionary units in addition to any required fractional fee, and building the balance of the required inclusionary units in accordance with the requirements of this chapter.
 - c. For custom lot projects wherein a developer creates lots for purchase, and the residential units are built separately by individual owners, the requirements of this chapter shall be satisfied by each individual purchaser of a lot by paying an in-lieu fee as set forth in Chapter 14.08 at or prior to the issuance of building permit based on the per habitable square feet of the residential building area to be built.
 - d. Upon a determination by the City Manager or his or her designee that payment of an in-lieu fee is preferred to building inclusionary units onsite, or one of the other alternatives described in section 14.04.070.A through C above, considering the following:

- i. Whether the production of the proposed inclusionary units will fill a need in an affordable housing category or some other prioritized housing need area.
 - ii. Whether the proposed inclusionary units are in a category for which the city has already met its RHNA goal, and therefore payment of a fee may be preferred to achieve alternative housing goals, for example the development of housing affordable to extremely low-income households.
 - iii. Whether there is a specific identifiable project that the city can support with the fees.
 - iv. Whether affordable units are appropriate in the specific project, for example a custom lot project.
2. The initial in-lieu fee schedule shall be set by city council resolution or other action of the city council so that the per unit fee amounts are not greater than the estimated total development cost of a prototypical inclusionary unit.
3. In-lieu fees payable pursuant to this chapter are established in section 14.08.020. The City Council may annually review the fees authorized by this subsection by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the City Council does not review the fees authorized by this subsection, the amounts stated in the fee schedule shall be increased automatically effective January 1 based on the annual increase in inflation as reported in the Engineering News Record City Cost Index.
4. In-lieu fees shall be calculated based on the fee schedule in effect at the time the fee is paid, unless otherwise required by state law. In-lieu fees payable pursuant to this chapter 14.04 shall be paid prior to issuance of building permits for the market-rate units in a residential project. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of units then permitted. Where payment is delayed, in the event of default or for any other reason, the amount of the in-lieu fee payable under this subsection shall be based upon the fee schedule in effect at the time the fee is paid to the extent permitted by applicable law.

14.04.080 Use of in-lieu fees.

- A. All in-lieu fees collected pursuant to this chapter shall be deposited into a separate account to be designated as the city of Morgan Hill housing in-lieu fee fund.
- B. The in-lieu fees collected pursuant to this chapter, and all earnings from investment of such fees, shall be expended exclusively to provide or assure continued provision of affordable housing in the city through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies, or other methods, and for costs of administering programs that serve those ends. The housing assisted with such funds shall be of a type, or at an affordability level, for which there is a need in the city and that is not adequately supplied by private development, for example housing affordable to extremely low-income households.

14.04.090 Waiver of requirements.

Notwithstanding any other provision of this chapter, the requirements of this chapter shall be waived, adjusted, or reduced if the applicant demonstrates that applying the requirements of this chapter would take property in violation of the constitutions of the United States or the State of California or would otherwise result in an unconstitutional application of this chapter. To receive a waiver, adjustment or reduction under this section, the applicant must file a written request together with the development application(s) when applying for a first approval for the residential project, and/or as part of any appeal that the city provides as part of the process for the first approval. The written request shall provide substantial evidence showing that applying the requirements of this chapter would take property in violation of the constitutions of the United States or the state of California or would otherwise result in an unconstitutional application of this chapter. The city may assume that: (a) the applicant will provide the most economical inclusionary units feasible meeting the requirements of this chapter; and (b) the applicant is likely to obtain housing subsidies when such funds are reasonably available. The waiver, adjustment, or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

14.04.100 Enforcement.

- A. The city council may adopt guidelines, by resolution, to assist in the implementation and administration of all aspects of this chapter.
- B. The city shall be authorized to enforce the provisions of this chapter and all inclusionary affordable housing agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on inclusionary units by civil action and any other proceeding or method permitted by law.
- C. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter.
- D. The remedies provided for in this chapter shall be cumulative and not exclusive, and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.
- E. The city shall evaluate the effectiveness of the ordinance codified in this title, for review by the city council, five years after the operative date of this title.
- F. No permit, license, map, or other approval or entitlement for a residential project shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.

14.04.110 Monitoring.

The inclusionary housing guidelines adopted or to be adopted by the city, and each inclusionary affordable housing agreement shall include provisions for monitoring by the city of each residential project and each inclusionary unit for compliance with the terms of this chapter, the inclusionary housing guidelines, and the applicable inclusionary affordable housing agreements. The city and/or its designated administrator shall also monitor and submit compliance reports to governmental agencies as required by law. Such provisions shall require property owners

to submit annual compliance reports to the city and/or its administrator, and shall authorize the city or its administrator to conduct periodic on-site inspections and audits to ensure compliance with all applicable laws, policies, and agreements. The city council may adopt fees to cover the city's costs of monitoring and compliance. Such fees shall be payable by the property owner and shall be deposited into the city's housing in-lieu fee fund.

Section 2. Section 14.08.020 (Fee established) of Chapter 14.08 (In-Lieu Housing Fees) of Title 14 (Housing) is hereby amended to read:

- A. There is created an in-lieu housing fee for new residential development for residential projects that are required or which volunteer to pay an in-lieu housing fee.
- B. For-Sale Residential Projects Outside of Downtown. The in-lieu housing fee for "for-sale" residential projects outside of downtown for which there is a fifteen-percent inclusionary housing requirement is nineteen dollars and seventy cents per habitable square foot of the residential building area of market-rate housing.
- C. For-Sale Residential Projects Within Downtown. The in-lieu housing fee for "for-sale" residential projects within the downtown for which there is a ten-percent inclusionary housing requirement is thirteen dollars and twenty cents per habitable square foot of the residential building area of market-rate housing.
- D. Rental Residential Projects Outside of Downtown. The in-lieu housing fee for "rental" residential projects outside of downtown for which there is a fifteen-percent inclusionary housing requirement is twenty-nine dollars per habitable square foot of the residential building area of market-rate housing.
- E. Rental Residential Projects Within Downtown. The in-lieu housing fee for "rental" residential projects within the downtown for which there is a ten-percent inclusionary housing requirement is fourteen dollars and fifty cents per habitable square foot of the residential building area of market-rate housing.
- F. Basis for calculation of the In-Lieu Housing Fee. The city approves, adopts, and incorporates the summary report from Keyser Marston Associates (KMA), entitled "Summary of Per Square Feet In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements, and Summary of Per Square Feet In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements for Morgan Hill" dated September 25, 2018. This establishes the value of the in-lieu housing fee, which is determined to be a fair and effective fee to maintain the BMR program.
- G. The in-lieu housing fees shall increase annually on January 1 based on the Engineering News Record City Cost Index.

Section 3. Chapter 18.48 (Affordable Housing) of Title 18 (Zoning) is hereby repealed in its entirety.

Section 4. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

City of Morgan Hill
Ordinance No. 2326, New Series
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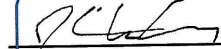
Section 5. Effective Date; Posting. This Ordinance shall take effect 30 days after adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 1ST DAY OF DECEMBER 2021, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 15TH DAY OF DECEMBER 2021, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Gino Borgioli, Yvonne Martinez Beltran, John McKay, Rene Spring
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	Rich Constantine

APPROVED:

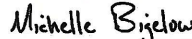
DocuSigned by:



JOHN MCKAY, Mayor Pro Tem

ATTEST:

DocuSigned by:



MICHELLE BIGELOW, City Clerk

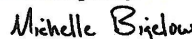
∞ CERTIFICATE OF THE CITY CLERK ∞

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2326, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 15th day of December 2021.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 12/20/2021

DocuSigned by:



MICHELLE BIGELOW, City Clerk